IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.2203 of 2003

Decided on : May 19, 2009

Sanjeev Kumar

... Petitioner

VERSUS

The State of Haryana

... Respondent

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.Ashok Kumar Sharma, Advocate – amicus curiae for the petitioner.

Mrs.Naveen Malik, Additional Advocate General for the respondent – State of Haryana.

A.N.JINDAL, J.-

Judgment of conviction and sentence dated 8/11.7.2003 passed by Sub Divisional Judicial Magistrate, Pehowa and also the judgment dated 16.10.2003 passed by the then Sessions Judge, Kurukshetra, dismissing the appeal, have been challenged by Sanjeev Kumar – petitioner (herein referred as the petitioner) by way of this petition.

The petitioner was charged for the offences under Sections 279/304-A of the Indian Penal Code on the allegations that on 2.6.2000, the complainant Tarsem Kumar (herein referred as the complainant) along with his cousin Sohan Lal r/o Ismailabad had gone to the villages for recovery. At about 7.30 a.m., when they reached the bus stop of village Jalbera, they

saw Mohan Lal – deceased coming on his scooter bearing No.HR-05B-8677 from the side of Pehowa towards the bus stop, Jalbera. Simultaneously, a Maruti Van bearing No.HR-01H-9402, driven by the petitioner rashly and negligently came from the side of Ismailabad and struck into the scooter of Mohan Lal. Resultantly, he fell down. Thereafter, he was moved to Government Hospital, Ismailabad, where the doctors declared him dead. On the aforesaid statement of the complainant, the case was registered and investigated.

On presentation of the challan, the petitioner was charged under Sections 279 and 304-A of the Indian Penal Code, to which he pleaded not guilty and claimed trial. The prosecution led evidence. Consequently, the statement of the petitioner under Section 313 of the Code of Criminal Procedure was recorded. The petitioner was also given opportunity to lead defence.

Ultimately, the petitioner was convicted and sentenced to undergo rigorous imprisonment for two months and pay fine of Rs.200/- under Section 279 IPC and to undergo rigorous imprisonment for one year and pay fine of Rs.1000/- under Section 304-A IPC. The appeal preferred by him was also dismissed.

The arguments were advanced by Mr.Ashok Kumar Sharma, amicus curiae for the petitioner as well as Mrs.Naveen Malik, Additional Advocate General for the State of Haryana.

The case is based upon solemn testimonies of the complainant (PW3) and Sohan Lal (PW4), both eye witnesses and both having no animus or grudge against the petitioner, had no reason to depose falsely against

him. They consistently stated that it was the petitioner, who was driving the vehicle rashly and negligently at the unfortunate hour.

The presence of both the aforesaid witnesses is being doubted by the counsel for the petitioner, but no merit could be found in this contention. The witnesses had the opportunity to see and had seen the petitioner at the time of occurrence. The petitioner had come down for seeing the impact of the accident. The impressions, which were printed in the minds of the witnesses regarding the identity of the petitioner, could not be vanished as they had the opportunity to see him at the spot. The parameters for holding Test Identification Parade do not apply to the facts of the present case. In cases, where, the witnesses are not known to the accused earlier and they had identified him for the first time in the Court, the necessity for holding the Test Identification Parade was justifiable, but in the present case, the petitioner had come down after the accident occurred and it was day time. No doubt about the visibility had been raised. The witnesses had the opportunity to see the petitioner before he ran away from the spot. As such, the aforesaid argument is turned down.

The other argument is that the name of the driver does not find mention in the First Information Report, therefore, the identity of the petitioner is doubtful. In this regard, it is observed that non-mentioning of the name in the FIR is not a convincing factor in the given circumstances of the case as it shows that all happened in the natural course and though the witnesses had seen the petitioner, yet as they did not know his name, therefore, his name could not be recorded in the FIR. The person involved

in the accident was none-else, but the real brother of the complainant, therefore, the agony, which he had undergone on seeing his brother being met with an accident can well be imagined, therefore, he might not have asked the name of the petitioner. In the light of the fact that the witnesses duly identified him in court, the discrepancy regarding non-mentioning of the name of the petitioner in the FIR hardly damages the case of the prosecution. Otherwise also, minor discrepancies are bound to occur in the statements of the truthful witnesses, rather keeping in view the fact that human memory is likely to fade with the passage of time, we cannot expect that the witnesses will give a parrot-like version. No such discrepancy has been pointed out or could be found, which may affect the substratum of the prosecution case.

Besides the above eye-witnesses, the prosecution in order to prove the involvement of the petitioner, has examined Kimti Lal (PW1), who stated that on intimation of the accident, he went to the Hospital and found that Mohan Lal had already died. Ashok Kumar (PW2) is a motor mechanic, who mechanically tested both the vehicles, which met with an accident. No defect could be found in the scooter, which could contribute to negligence on the part of Mohan Lal – deceased. Dr.G.D.Mittal (PW5) had conducted the post mortem examination and ASI Daya Nand (PW6) is the Investigating Officer and they have also fully proved the prosecution case on its remaining aspects.

Having scrutinised the judgments of both the courts below, it transpires that no illegality, much less any irregularity could be detected in the consistent findings recorded by both the courts below. Hence,

conviction of the petitioner is upheld.

While examining the sentence part, it is observed that it is already on the lower side and thus, it too requires no interference.

Thus, the petition is dismissed.

(A.N.JINDAL)
JUDGE

May 19, 2009
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To be Referred to Reporter - **Yes/ No**